

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

OCTOBER TERM, 1930

No. 5311

934

MABEL F. THOMPSON, APPELLANT,

vs.

ERNEST EUGENE THOMPSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED OCTOBER 17, 1930.

PRINTED DECEMBER 10, 1930.

Court of Appeals of the District of Columbia

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Court of Appeals of the District of Columbia

No. 5311.

MABEL F. THOMPSON, Appellant,

vs.

ERNEST EUGENE THOMPSON.

a Supreme Court of the District of Columbia.

In Equity.

No. 51563.

MABEL F. THOMPSON, Plaintiff,

vs.

ERNEST EUGENE THOMPSON, Defendant.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia,
Holding Equity Court.

Equity. No. 51563.

MABEL F. THOMPSON, Plaintiff,

vs.

ERNEST EUGENE THOMPSON, Defendant.

Memorandum.

June 18, 1930.—Bill for Limited Divorce and Maintenance filed.

Motion for Alimony Pendente Lite.

Filed June 18, 1930.

* * * * *

Comes now the plaintiff in the above entitled cause and moves this Honorable Court for an order herein decreeing that the defendant pay to the plaintiff (1) a suitable sum for the support and maintenance of herself pending final hearing herein and (2) a suitable sum on account of counsel fees to enable her to prosecute this suit.

And for grounds for said motion refers to the bill of complaint filed herein.

W. J. DOW,
Attorney for Plaintiff.

To Ernest Eugene Thompson, defendant:

Please take notice that the above-entitled motion will be called to the attention of the Court on Friday, June 20, 1930, at 10:00 o'clock or as soon thereafter as the same may be heard.

W. J. DOW,
Attorney for Plaintiff.

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Marshal's Return.

Served a copy of the within motion on Ernest Eugene Thompson 6-21-30 personally.

EDGAR C. SNYDER,
U. S. Marshal in and for the Dist. of Columbia,
By J. A. KAPP,
Deputy U. S. Marshal.

Answer to Bill for Limited Divorce and Maintenance.

Filed June 27, 1930.

* * * * *

The answer of the Defendant, Ernest Eugene Thompson, respectfully represents to the Court as follows:

I, II, and III. The defendant admits the allegations contained in paragraphs numbered I, II, and III of the bill of complaint filed herein.

IV. Answering paragraph numbered IV, defendant denies that the plaintiff has always been a dutiful and faithful wife, but avers that constantly during their married life she has nagged and abused the defendant; but he admits that there were no children born of said marriage.

V. Answering paragraph numbered V of the bill of complaint, defendant denies that at any time during July, 1929, or on any other occasion, that he beat or struck the plaintiff; he denies that at any time he ever assaulted his wife, or attempted to assault her.

VI. Answering paragraph numbered VI of the bill of complaint, the defendant denies that on the evening of April 19, 1930, he either beat, abused, or in any way threatened the plaintiff, but avers the true facts to be as follows: That the plaintiff remained away from
3 home the entire evening and night of April the 18th, and that on the morning of April the 19th, shortly before noon, she returned home, at which time without any justification she became extremely abusive to the defendant, threatened to do various things to him, cursed and swore at him and struck him; that the defendant, as a result of the conduct of the plaintiff and for the purpose of avoiding any trouble, left the house shortly after noon for his work at the Sixth Police Precinct, where he was supposed to go on duty at 4 P. M.; that he did not return to the house any more until after midnight when he was off duty; that upon his return to the house after completing his eight hour trick of duty, it had been completely stripped of all furniture and all of the belongings; and that the only thing that was left in the house were some wearing apparel of the defendant which was thrown in a corner of a room. That all of the furniture which had been taken out of the house had been paid for by the defendant, with the exception of a bill of \$20.00 which was due on a mattress.

VII. Defendant denies that his conduct at any time was such as to expose the plaintiff to arrest for violating any of the laws of the District of Columbia, he further denies that he at any time took her anywhere for the purpose of enabling the defendant to violate any of the liquor laws of the United States. He further denies that he at any time has threatened her with any injury.

VIII. He denies the allegations contained in paragraph numbered VIII, with respect to his being under the in-

fluence of intoxicating liquors. He further denies
4 that on the 15th day of April, or at any time about
that time, he was guilty of any improper conduct
as a member of the Police Department on any charge of be-
ing off his beat or leaving after colliding, but avers that
about that time and while on Police business with the per-
mission and knowledge of his superiors, he was involved
in a collision with another police officer, but he denies that
at any time he was guilty of leaving the scene of any col-
lision contrary to the law.

IX. Answering paragraph numbered IX, defendant avers
that his present salary with the Police Department is
\$2,100.00 per annum, but that from this sum is deducted
2½ per cent each month which leaves the defendant draw-
ing a net salary of \$170.62 each month.

X. Answering paragraph numbered X, the defendant de-
nies that he ever made any statements to the effect that he
would disobey any order of the Court, and further denies
that he ever stated that he would leave the jurisdiction of
the Court, and avers that at no time has he had any inten-
tion of leaving the jurisdiction of this Court. That the de-
fendant has been connected with the Metropolitan Police
Force for the past eight years. The defendant further
avers that at the time his wife deserted him, she took with
her his copy of the Police Manual, Police Regulations,
three tie pins, one set of gold studs, and some pictures of
his mother, none of which articles have been returned to
him.

XI. Answering paragraph numbered XI, the defendant
denies the allegations contained therein.

5 XII. Answering said bill of complaint further, the
defendant avers that approximately three years ago
the defendant endeavored to purchase a home for himself
and his wife in the 600 block of Rittenhouse Street, N. W.,
that the parties lived there until about March 1st of this
year, at which time the plaintiff refused any longer to stay
there. That in his endeavor to please his wife, the defend-
ant at her repeated insistence finally agreed to move from
the said house; that by reason of his moving he was unable
to continue payments on account of the house, although
for the past several years he had been paying \$55.00 per
month on account of same, which together with an initial
payment of \$350.00 gave him about an \$800.00 equity in

the house, which equity was wiped out. Answering said bill of complaint still further, the defendant avers that in his endeavor to accumulate some property, the defendant purchased a home at 708 12th St., S. E., on which he made an initial payment of \$200.00 and monthly payments of \$45.00 per month. That the house has been rented and has yielded an income of approximately \$40.00 per month from the rental of the same, and the defendant added the difference between the rent received and the amount due on account of payments every month. That this house was purchased in the name of his wife although none of the payments on account of same were made by her. That since the separation of parties hereto, the defendant has not been able to make any payments on account of same, and that he has not collected any of the rent from the said house. That at the time the plaintiff left the defendant he owed bills approximating \$350.00 as follows: Balance on furniture, \$20.00, Goldenbergs, \$90.00, Dentist bill 6 for his wife, \$10.00, Doctor's Bill, \$10.00, Gas and Electricity approximately \$5.00, Balance on Note, \$120.00. Answering said paragraph still further, defendant avers that he has been informed and believes from this information that his wife, with another woman, has rented a house consisting of eighteen rooms, some of which are furnished with the furniture of the defendant, and that the plaintiff receives a substantial income from the rental of this same house. The house is operating as a boarding and rooming house.

Wherefore, the premises considered, defendant prays:

1. That the prayers of the Bill of Complainant be denied.
2. And for such other and further relief as the nature of the case may require and as to the Court may seem proper.

ERNEST EUGENE THOMPSON.

E. RUSSEL KELLY,
Atty. for Deft.

DISTRICT OF COLUMBIA, ss:

Ernest Eugene Thompson, being first duly sworn on oath, deposes and says: that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things as of his own knowledge therein stated

are true and those stated on information and belief he believes to be true.

ERNEST EUGENE THOMPSON.

Subscribed and sworn to before me this 27th day of June, 1930.

[SEAL.]

PRICIE N. EVANS,
Notary Public, D. C.

7 *Amended Bill of Complaint for Limited Divorce.*

Filed July 14, 1930.

* * * * *

To the Honorable Justice of the Supreme Court of the District of Columbia holding Equity Court:

The plaintiff, Mabel F. Thompson, respectfully shows to the Court as follows:

1. That the plaintiff, Mabel F. Thompson, is a citizen of the United States and a resident of the District of Columbia, and brings this suit in her own right as hereinafter appears.

2. That the defendant, Ernest Eugene Thompson, is a citizen of the United States and a resident of the District of Columbia, and is sued in his own right as hereinafter appears.

3. That heretofore, to wit, on January 10, 1919, the said plaintiff and defendant were united in marriage at Camden, New Jersey, and have since, except as hereinafter set forth, lived together as husband and wife, the past seven years having been in the District of Columbia.

4. That to the plaintiff and the defendant no children have been born.

5. That the plaintiff at all times since her said marriage to the defendant has been a dutiful and faithful wife; but that the defendant has been addicted to the excessive use of intoxicating liquor, has subjected the plaintiff to abuse and humiliation, has inflicted bodily injury upon her, and has caused her physical and mental suffering, as will hereinafter be more specifically shown.

6. That on or about June 1, 1924, at premises 324 4th Street, N. E., in the City of Washington, District of Colum-

8 bia, the defendant choked, kicked, and beat the plaintiff, and inflicted serious physical injuries upon her.

7. That on or about October 16, 1925, at premises 324 4th Street, N. E., in the City of Washington, District of Columbia, the defendant choked the plaintiff, attempted to throw her out of a window, attempted to throw her down a flight of stairs, and inflicted painful physical injuries upon her.

8. That in the month of December, 1925, or at sometime shortly prior to said month, the defendant contracted a venereal disease through immoral associations with another woman, and that he exposed the plaintiff to the danger of being infected with said disease.

9. That on or about April 18, 1927, at premises 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, the defendant, while intoxicated, pursued the plaintiff and threatened her with a revolver.

10. That on or about July 15, 1928, at premises 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, the defendant assaulted and beat the plaintiff with his fists.

11. That on the night before Thanksgiving Day of 1928, the defendant drank intoxicating liquor to the extent that he became stupefied, and that for a period of approximately one month thereafter he was almost continuously intoxicated. That during the period aforesaid, the defendant frequently struck the plaintiff with such force as to bruise her flesh.

12. That on or about February 28, 1929, at premises 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, the defendant pushed the plaintiff out of her bed and onto the floor, and thereafter locked her out of their bedroom.

9 13. That the plaintiff is informed, believes, and expects to prove at the trial of this cause that on or about September 4, 1929, and during the temporary absence of the plaintiff, the defendant entertained in the home of the parties hereto at premises 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, an immoral woman, whose identity is unknown to the plaintiff, and that on said occasion the defendant committed adultery with the aforesaid woman.

14. That on or about October 1, 1929, the defendant came home in a condition of extreme intoxication, and the plaintiff then requested the defendant to leave their home and to live elsewhere; that the defendant did take up his residence elsewhere and lived separate and apart from the plaintiff for a period of approximately one month. That during the period last mentioned, the defendant continued to drink excessively.

15. That on or about January 3, 1930, and during the temporary absence of the plaintiff, the defendant entertained a number of companions in the home of the parties hereto at 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, and conducted therein a drunken brawl.

16. That the plaintiff is informed, believes, and expects to prove at the trial of this cause that on or about January 1, 1930, the defendant was guilty of improper and offensive conduct towards a certain woman while in the line of duty as a member of the Metropolitan Police Department of the District of Columbia. That charges of improper conduct were lodged against the defendant in said Police Department, and that by reason thereof the defendant was reduced in rank on or about January 17, 1930. That during the pendency of the aforesaid charges, the defendant informed the plaintiff that unless she interceded in his behalf he would be discharged; and that the plaintiff did personally intercede on behalf of the defendant and that she was extremely humiliated thereby. That during the time the aforesaid charges were pending, and while the plaintiff was interceding on his behalf, the defendant drank excessively and was almost continuously intoxicated.

17. That on or about February 20, 1930, at premises 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, the defendant pushed the plaintiff out of her bed and attempted to throw her over the banister of the stairs.

18. That during the latter part of February, 1930, the plaintiff and the defendant lost their home at 619 Rittenhouse Street, N. W., in the City of Washington, District of Columbia, by reason of default in the payments on account of the purchase price thereof, which said default the plaintiff avers was occasioned by the addiction of the defendant

to the use of intoxicating liquor and the squandering of his earnings for the purchase thereof.

19. That on or about March 1, 1930, at premises No. 11 R Street, N. E., in the City of Washington, District of Columbia, the defendant choked the plaintiff, dragged her out of their apartment, and threw her onto the floor of the corridor.

20. That on or about April 18, 1930, at the premises last mentioned, the defendant assaulted the plaintiff, threatened to stomp her to death, told her that he had been trying to get rid of her for a long time, and ordered her to leave their home.

21. That on or about April 19, 1930, at the premises last mentioned, the defendant again ordered the plaintiff
11 to leave him, and that on this occasion he cursed her and beat her on her face, arms, back and neck with his fists, and thereafter left the premises telling the plaintiff to look for him when she saw him.

22. That on, to wit, April 19, 1930, following the occurrence last hereinbefore related, the plaintiff caused her household furniture to be moved into the home of a friend at premises 1330 Vermont Avenue, N. W., in the City of Washington, District of Columbia, and that the plaintiff has since lived separate and apart from the defendant. That since said date the defendant has contributed nothing whatsoever towards the support of the plaintiff.

23. That the plaintiff is unemployed and is physically unable to work; that she is in receipt of no income whatsoever with the exception of certain rentals hereinafter to be mentioned; that she derives no income from the use of her household furniture in premises 1330 Vermont Avenue, N. W., the same being temporarily in said premises and being used by the occupant of said premises until the plaintiff can become permanently located; and that the plaintiff has been dependent upon the generosity of her friends for support.

24. That the plaintiff owns an equitable interest in a dwelling house known as premises 708 12th Street, S. E., in the City of Washington, District of Columbia, which said house was purchased in the month of February, 1926, the purchase price thereof being \$4,500.00. That the initial payment on the said house was \$250.00, which was made by the plaintiff from money accumulated by her from keeping

roomers in her home, and that all subsequent payments have been made by the plaintiff. That the said property is now encumbered to the extent of approximately \$3,600.00, and that the payments required to be made on account of principal and interest due on first and second trusts, exclusive of taxes and repairs, amount to \$43.00 per month. That the said property is rented at the rate of \$40.00 per month, which said rent has been collected by the plaintiff since the separation of the parties hereto. That the plaintiff has been compelled to borrow the money necessary to supplement the amount received by her for rent to an amount sufficient to meet the required monthly payments on said house.

25. That the defendant is a member of the Metropolitan Police Department of the District of Columbia; that at the time the plaintiff filed her original bill herein the defendant's salary was \$2,100.00 per year, but that the plaintiff is informed, believes, and avers the fact to be that on July 1, 1930, the defendant's salary was increased to \$2,400.00 per year.

Wherefore, the premises considered, the plaintiff prays:

1. That the appropriate process of this Court be issued against the defendant.

2. That the plaintiff be awarded a divorce *a mensa et thoro* from the defendant upon the ground of cruelty, and that the plaintiff be awarded permanent alimony.

3. That during the pendency of this cause the plaintiff be awarded alimony in an amount sufficient for her maintenance.

4. That the plaintiff be awarded counsel fees and the costs of this proceeding.

5. And for such other and further relief as to the Court may seem meet and just.

MABEL F. THOMPSON,
Plaintiff.

WILLIAM J. DOW,
By J. M. B.,
JEAN M. BOARDMAN,
Attorneys for Plaintiff.

13 DISTRICT OF COLUMBIA, ss:

I, Mabel F. Thompson, being first duly sworn according to law, depose and say that I have read the foregoing and

annexed amended bill of complaint by me subscribed and that I know the contents thereof; that the matters therein stated as of my own knowledge are true and those stated upon information and belief I believe to be true.

MABEL F. THOMPSON.

Subscribed and sworn to before me this 7th day of July, 1930.

[SEAL.]

LENORA DEMA BOWERS,
Notary Public, D. C.

The filing of the annexed amended bill of complaint is hereby consented to.

E. RUSSEL KELLY,
Attorney for Defendant.

Leave to file the annexed amended bill of complaint is hereby granted.

JENNINGS BAILEY,
Justice.

Order for Alimony Pendente Lite.

Filed July 21, 1930.

* * * * *

Upon consideration of the motion of the plaintiff, it is by the Court this 21st day of July, 1930,

Ordered that during the pendency of this cause, or until the further order of the Court herein, the defendant, Ernest Eugene Thompson, pay to the plaintiff, Mabel F. Thompson, alimony at the rate of \$30.00 per month, the same to be paid on the last day of each month hereafter, including the month of July, 1930.

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PEYTON GORDON,
Justice.

From the above order the plaintiff in open court notes an appeal to the Court of Appeals of the District of Columbia; and the penalty of the undertaking for costs of appeal is hereby fixed in the amount of \$100.00.

PEYTON GORDON,
Justice.

Memorandum.

August 7, 1930.—Bond (\$100) approved and filed.

Assignment of Error.

Filed August 14, 1930.

* * * * *

Comes now the plaintiff and says that the Court erred and abused its discretion in not making an adequate allowance of alimony pendente lite to the plaintiff.

WILLIAM J. DOW,
JEAN M. BOARDMAN,
Attorneys for Plaintiff.

Service acknowledged this 14th day of August, 1930.
E. RUSSEL KELLY,
Attorney for Defendant.

15 *Designation of Record.*

Filed August 14, 1930.

* * * * *

The Clerk will please prepare a transcript of record in the above-entitled cause on appeal to the Court of Appeals of the District of Columbia, and include therein the following:

1. Memorandum of filing of original bill of complaint on June 18, 1930.
2. Motion for alimony pendente lite.
3. Answer to bill of complaint.
4. Amended bill of complaint.
5. Order for alimony pendente lite, and note of appeal.
6. Memorandum of filing of undertaking on appeal.
7. Assignment of error.
8. This designation of record.

WILLIAM J. DOW,
JEAN M. BOARDMAN,
Attorneys for Plaintiff.

Service acknowledged this 14th day of August, 1930.

E. RUSSEL KELLY,
Attorney for Defendant.

16 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 15, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 51563 in Equity, wherein Mabel F. Thompson is Plaintiff and Ernest Eugene Thompson is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of September, 1930.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 5311. Mabel F. Thompson, appellant, vs. Ernest Eugene Thompson. Court of Appeals, District of Columbia. Filed Oct. 17, 1930. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA
FILED

FEB 28 1931

Henry W. Hodges

CLERK.

IN THE
Court of Appeals, District of Columbia
JANUARY TERM, 1931.

No. 5311.

MABEL F. THOMPSON, *Appellant*
vs.
ERNEST EUGENE THOMPSON, *Appellee.*

BRIEF ON BEHALF OF APPELLANT.

WILLIAM J. DOW,
JEAN M. BOARDMAN,
Attorneys for Appellant.

IN THE
Court of Appeals, District of Columbia

JANUARY TERM, 1931.

No. 5311.

MABEL F. THOMPSON, *Appellant*

vs.

ERNEST EUGENE THOMPSON, *Appellee.*

BRIEF ON BEHALF OF APPELLANT.

STATEMENT OF THE CASE.

On June 18, 1930, the appellant, Mabel F. Thompson, filed in the Supreme Court of the District of Columbia a bill of complaint for a limited divorce from the appellee, Ernest Eugene Thompson (Rec. p. 1), and concurrently therewith she filed a motion for alimony pendente lite (Rec. p. 2). On June 27, 1930, the appellee answered the said bill of complaint (Rec. pp. 2-6), and thereafter on July 14, 1930, the appellant, with leave of court, filed an amended bill of complaint (Rec. pp. 6-11), which said amended bill of complaint was not answered by the appellee.

From the appellee's amended bill of complaint, it appears that the parties were married on January 10, 1919, and thereafter lived together until April 19, 1930, on which latter date the appellant was compelled to leave the appellee by reason of numerous acts of physical violence and indignities inflicted upon her by the appellee, a recital of which is not deemed necessary to the determination of the question presented by this appeal.

With respect to her circumstances and the necessity of obtaining an allowance of alimony pendente lite, the appellant in her amended bill of complaint alleged substantially as follows: That she owned an equitable interest in a dwelling house known as premises 708 12th Street, S. E., in the City of Washington, District of Columbia, which said house was purchased in the month of February, 1926, at the price of \$4,500.00; that an initial payment of \$250.00 was made by the appellant from money accumulated by her from keeping roomers in her home, and that all subsequent payments had been made by her; that the said property was encumbered to the extent of approximately \$3,600.00, and that the payments required to be made on account of principal and interest due on first and second trusts, exclusive of taxes and repairs, amounted to \$43.00 per month; that the said property was rented at the rate of \$40.00 per month; that the said rent had been collected by the appellant since the separation of the parties, but that the same had been insufficient to meet the monthly payments on said property. That the appellant owned certain articles of household furniture which she had moved into the home of a friend until she could become permanently lo-

cated, but that she derived no income from the use of said furniture. That the appellant was unemployed, was physically unable to work, was in receipt of no income whatsoever with the exception of the rentals above mentioned, that since their separation the appellee had contributed nothing towards her support, and that she had been dependent upon the generosity of her friends for support.

With respect to the faculties of the appellee, he stated in his answer to the original bill of complaint, which was verified on the 27th day of June, 1930, that he was a member of the Metropolitan Police Department, that his salary was \$2,100.00 per annum, from which sum was deducted 2½ per cent each month, presumably for retirement fund. In her amended bill of complaint, however, the appellant averred that she was informed and believed that on July 1, 1930, the appellee's salary had been increased to \$2,400.00 per year, and this was not thereafter denied by the appellee. In his answer to the original bill the appellee alleged that at the time the appellant left him he owed bills approximating \$350.00, which he itemized and which when correctly added total \$255.00 and not the amount alleged by the appellee. He failed to state what, if any, indebtedness he owed at the time of the verification of the said answer. The appellee further alleged that he had purchased the real estate hereinbefore mentioned, had made the initial and subsequent payments, and apparently claimed to be the equitable owner thereof, although he admitted title had been taken in the name of the appellant.

Upon consideration of the motion of the appellant and upon the basis of the facts of record as above

stated, the court, by its order of July 21, 1930, awarded to the appellant alimony pendente lite in the amount of \$30.00 per month, the same to be paid on the last day of each month thereafter, including the month of July, 1930. From this order the appellant appeals.

ASSIGNMENT OF ERROR.

The Court erred and abused its discretion in not making an adequate allowance of alimony pendente lite.

ARGUMENT.

By making the order appealed from the lower court recognized that the appellant had stated a case justly entitling her to an allowance of alimony pendente lite, and no question as to the propriety of making such an allowance is presented here. The only question presented is whether or not the alimony awarded was adequate in amount.

Nothing is better understood in law than that the purpose for which alimony pendente lite is allowed in a divorce case is to provide a suitable maintenance for the wife pending the determination of the merits of the controversy, and to enable her to appear before the law on an equality with her husband. It follows as the corollary of this well-recognized principle that the amount of alimony should be adequate to accomplish the object for which it is allowed.

In the case of *Day v. Day*, 15 Idaho 107, the court quoted with approval from 2 Nelson on Divorce and Separation, sec. 859, as follows:

“The object in granting this kind of alimony is to assist the wife in maintaining herself

until the termination of the suit; and the amount should be adequate for this purpose. The amount must be governed by the needs of the wife. If she is accustomed to support herself and is doing so in a manner suited to the circumstances of the parties, there is no necessity for this allowance. If her means are not adequate, the temporary alimony must be sufficient to supply the deficiency. The amount varies with her needs. If she is accustomed to a moderate style of living, the amount should not be greater than will support her accordingly, although the husband has a large income. Unless the wife is profligate or has been living beyond her husband's means, she should be allowed sufficient means to continue her accustomed mode of living during the suit. No specific rules have been formulated or followed by our courts in fixing this amount. And in the nature of the case no definite proportion should be adopted, since the court must consider the wealth and social standing of the parties, their manner of living, the present available means of the wife and the ability and income of her husband, her health and probable needs while the suit is pending, and many other circumstances; and from all these the court may estimate what amount, if any, will be necessary to maintain her in a suitable manner during the litigation. Perhaps the most satisfactory rule is that the amount must be sufficient to enable the wife, in addition to her own means, to maintain herself during the suit according to her former manner of living."

In the case of *Harding v. Harding*, 144 Ill. 588, the court said:

"It would seem equitable and just that the wife, who is prosecuting her suit in good faith,

should be placed upon an equality with the husband, and if her income be insufficient to maintain her, and to carry on the litigation, his income should be required to contribute before she should be required to exhaust her estate. We do not deem it necessary to enter upon a discussion of the reasons underlying the rule, entitling the wife to a proportion of the joint incomes, when necessary for her support. If the income of the wife be sufficient to suitably support her, there will ordinarily exist no reason for making an allowance for that purpose. But if the income of the wife be insufficient, and that of the husband be ample, equitable considerations, and the weight of authority require, as we think, that such a sum should be allowed from the husband's income as will when added to her own, enable the wife to live comfortably pending the litigation in the station in life to which he has accustomed her."

In the case of *Patterson v. Patterson*, 38 N. Y. S. 637, the court said:

"In fixing the amount of alimony the court should take into consideration the nature of the action, whether or not the wife has a good cause of action, the probable difficulty of proving her case, and the strength of the case she is likely to be required to meet and the probable expense of carrying on the litigation. In coming to a conclusion as to the amount of alimony, the station in life of the husband, his means as shown by the testimony, including his expenditures, and his apparent condition, should be the criterion as to the proper amount necessary to give the wife suitable support; it being remembered that such suitable support is not simply what will supply her with the bare necessities of life, but such sum as will keep her in the

situation and condition in which her husband's means entitle her to live. When those questions are answered, and the amount necessary to pay such expenses is ascertained, the amount of the allowance ceases to be entirely a question of discretion, but should be made commensurate with those needs."

In the case of *Gould v. Gould*, 114 N. Y. S. 331, the court said:

"Undoubtedly the rule, as many times announced, is that the court is not to limit the award of alimony to what is adequate to the wife's bare subsistence. The wife is to be maintained in a manner fitting to her station in life; and for this purpose the alimony may sometimes be one-third or even one-half of the husband's income, if the result is reasonably necessary."

In the case of *Westphal v. Westphal*, 132 Md. 330, which was a case involving the allowance of alimony pendente lite, the court reaffirmed the rule applied with respect to permanent alimony in the earlier case of *Ricketts v. Ricketts*, 4 Gill, 105, as follows:

"The law has laid down no exact proportion. It sometimes gives a third, sometimes a moiety. The object to which the attention of the Court is directed, and at which it aims, is to secure to a wife, by a suitable provision, a certain and comfortable maintenance."

It appears from the facts of record in this case that the appellant is the owner of a certain piece of real estate in the District of Columbia, but it

further appears that the gross income from said property is less than the payments required to be made by the appellant on said property, and that for all practical purposes the said property constitutes a liability rather than an asset to the appellant in her present status as a litigant in a matrimonial action. It further appears that the property was purchased in the year 1926 at the price of \$4,500.00, but that the same is encumbered by both a first and a second trust in the total amount of approximately \$3,600.00. If the said property can be considered as having now a value equivalent to its original purchase price, a fact which is extremely doubtful in view of the present depression, the appellant's apparent equitable interest in said property is a scant \$900.00, an amount far too small to enable the appellant to borrow money upon the security of said property or to realize anything therefrom if she be required to sell at the price which can be obtained by one who sells because he is compelled to sell. However this may be, it is well established that a wife's right to alimony is not affected by the ownership of unproductive property, and that the wife is not required to exhaust the corpus of her estate before the husband will be required to maintain her. *Harding v. Harding*, 144 Ill. 588. *Cooper v. Cooper*, 185 Ill. 163. *White v. White*, 50 Ill. App. 149.

Giving due consideration to all the facts presented by the record in this case, the question fairly presented is whether or not the sum of \$30.00 per month is adequate suitably to maintain a woman in the District of Columbia at the present time. That it

is not is too obvious to require discussion or a consideration of the character of the shelter, food, and raiment which might be obtained upon such an allowance. The much cherished and politically protected "American standard of living" has indeed fallen to low estate if it is now to be considered that a dollar a day is the measure of what constitutes suitable maintenance for a respectable woman in the District of Columbia.

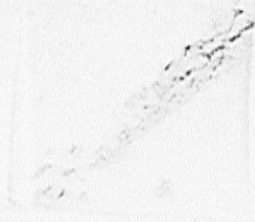
In this case the husband, having a regular income of \$200.00 per month, is in a position to pay without hardship a much greater amount than that fixed by the court below, and there exists no reason why the appellant, during the pending of her suit, should be subjected to privation. "The right to be divorced would be a bitter mockery, if to obtain it an injured wife is required to endure not only violence to womanly delicacy, but penury and destitution." These words uttered eighty years ago by Judge Nisbet, speaking for the Supreme Court of the State of Georgia, in the case of *McGee v. McGee*, 10 Ga. 477, are as true today as then and have a fitting application here.

While the allowance of alimony pendente lite, and the fixing of the amount thereof, is a matter reposed in the discretion of the court, this discretion is to be exercised judicially and if abused the same will be reviewed and corrected on appeal. *Tolman v. Tolman*, 1 App. D. C., 299. *Lesh v. Lesh*, 21 App. D. C., 475. With all deference to the lower court, it is respectfully submitted that in this case there has been that palpable abuse of discretion which warrants and requires this court to interfere with the action taken below.

In conclusion, therefore, it is respectfully submitted that the order of July 21, 1930, should be modified and that the amount of alimony pendente lite awarded thereby be increased to the sum of \$75.00 per month or such amount as the court may deem adequate for the suitable maintenance of the appellant.

Respectfully submitted,

WILLIAM J. DOW,
JEAN M. BOARDMAN,
Attorneys for Appellant.



MAR 24 1931

Henry M. Hodges

CLERK.

IN THE

**Court of Appeals of the
District of Columbia**

JANUARY TERM, 1931.

No. 5311

MABEL F. THOMPSON, *Appellant*

vs.

ERNEST EUGENE THOMPSON, *Appellee*

BRIEF ON BEHALF OF APPELLEE

E. RUSSEL KELLY,

Attorney for Appellee.

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**Court of Appeals of the
District of Columbia**

JANUARY TERM, 1931.

No. 5311

MABEL F. THOMPSON, *Appellant*

vs.

ERNEST EUGENE THOMPSON, *Appellee*

BRIEF ON BEHALF OF APPELLEE

STATEMENT OF CASE

The parties hereto were married in January, 1919. No children were born as a result of the union. Certain differences arose between them, the blame for

which is in dispute, and they separated. Certain property, title to which is held by the wife, the husband (appellee) claims was purchased with his funds. The husband further claims that his wife has an interest in a large rooming and boarding house from which she receives a "substantial income." (Rec. P. 5.)

Admittedly, the husband a police officer receives the sum of \$2,400.00 annually, less a deduction of 2½% taken by the Police Retirement fund.

After a complete hearing the Court below, with the Bill of Complaint, Amended Bill of Complaint and Answer of defendant before him awarded the plaintiff the sum of Thirty (\$30.00) Dollars per month as alimony *pendente lite*.

ARGUMENT

There was no abuse of discretion on the part of the Court below in making its award.

Counsel cites, among others, the case of Day v. Day, 15 Idaho 107. In that case the evidence before the Court showed the husband to be a man worth \$600,000, with an income between \$16,000 and \$84,000 per year. The evidence further disclosed that the husband had spent \$4,000 on a wedding trip, had given his wife

\$3,000 worth of jewelry and for some time prior to their marriage had given his prospective wife \$200 per month and had given her \$500 the month before their wedding. With all of these facts before them the appellate Court fixed as reasonable alimony the sum of \$3,000 per year. In the course of their opinion (at p. 116) the Court said:

“Many authorities are cited by counsel in their briefs, dealing with the subject of allowance for counsel fees, suit money and alimony in divorce proceedings. *Each of these cases, however, is decided upon the particular facts of the case and no uniform rule is announced for the guidance of the Court. It is impossible to announce or fix any recognized rule to govern the Court in determining this matter as each case must be controlled by the particular facts shown.*” (Italics supplied.)

And in the case of *Harding v. Harding*, 144 Ill. 588, likewise cited by counsel for appellant, the Court stated that at times one-fifth of the income of the husband may be allowed. However in the *Harding* case, although it was shown that the husband had an income “largely in excess of \$30,000 per year” the Court deemed an allowance of \$300 per month sufficient.

In other words, as has been pointed out in these cases, the general rule is, and of necessity has to be that each case must stand on its own facts.

Counsel in their brief use this language (Br. p. 9).

“The much cherished and politically protected ‘American standard of living’ has indeed fallen to a low estate if it is now to be considered that a dollar a day is the measure of what constitutes suitable maintenance for a respectable woman in the District of Columbia.” Such is not the case. The record, apparently overlooked by the appellant, discloses that the defendant stated under oath that the plaintiff had an interest in a rooming and boarding house from which she received a substantial income. Appellant further concedes she owns an equity of about \$900 in a house which defendant claims was purchased with his funds. Likewise at the time of the separation of the parties, all of the furniture, which defendant claims was purchased by him was taken from his house and admittedly is still held by the plaintiff.

In other words, these facts were before the lower Court:

The appellant has an interest (even according to her own admission) of at least \$900 in property, which appellant and appellee both claim was paid for by him or by her. (2) Appellee sets forth his wife was receiving a substantial income from a rooming and boarding house, which she denies. However in her Amended Bill (Paragraph 23) Appellant says that her furniture is temporarily in a certain premises and is “being used by the occupant of said premises until the plaintiff can become permanently located.” (3) There was no averment as to an illness of the appellant except that she was “physically unable to work;” no phy-

sician's statement as to the reason why, and this statement is, of course, denied by appellee when he says she is receiving a substantial income, as stated above. In addition appellee listed accrued bills for which he was liable of \$255. In this state of the record, the Court made an allowance of \$30.00 per month.

How can it be argued the Court abused its discretion. If counsel for appellant then or now could or can show the Court any facts justifying an increase, the case has not yet been disposed of. The allowance was merely, *pendente lite*. This allowance was made on July 21, 1930. Since that time no additional facts have been brought to the attention of any Justice sitting in the Equity Court for the purpose of having an increase in alimony awarded.

In *Germond v. Germond*, 4 Paige 643 (New Jersey) the Court said speaking of alimony *pendente lite* being awarded: "As a general rule, to guard against any abuse of the privilege of the wife to obtain a temporary support pending a suit for a divorce or separation, and to prevent the bringing of improper suits for the mere purpose of obtaining a support during a protracted litigation the temporary alimony must be limited to the actual wants of the wife, until the termination of the suit in her favor establishes the fact that she has been abused, and is entitled to a more liberal allowance."

And in *Westefiled v. Westefiled*, 37 N. J. Equity 195 the Court said "And it is equally clear that if the hus-

band refuses to perform this duty by abandoning his wife, or separating himself from her, and refusing or neglecting to maintain and provide for her, this Court may compel him to furnish suitable support and maintenance for her. But the Court cannot give such relief to the wife until the husband has had his day in Court, and been afforded an opportunity to contest her proofs and submit his own. An application for alimony pendente lite stands now solely on the ground of necessity.”

Therefore it is respectfully submitted to the Court of Appeals that the lower Court did not in any wise abuse it's discretion in the said matter. The merits of the case have not as yet been determined. The husband has not had the opportunity to offer his testimony in Court to rebut the charges made. On the record, however, he has denied them. There are no children involved in this action as the record affirmatively shows that during the twelve years of the married life of the parties no children were born to them.

CONCLUSION

In view of the facts that were set out on both sides and in view of the record as it was presented to the Court below, it is respectfully submitted that the award made by the District Supreme Court should not be disturbed and that this Court should affirm the order appealed from.

Respectfully submitted,

E. RUSSEL KELLY,

Attorney for Appellee.

